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ABSTRACT

Designed to give lawyers 12 practical suggestions that will make their presentations to elementary and secondary students more effective, this document also can be used by teachers. An introduction gives information about working with students: how to get to know students; how to make a presentation to students; how to choose a suitable topic; and how to lead students in discussion. Nine sample lessons including dispute resolution, legal procedure, access to justice, fundamental freedoms, and power and liberty are provided. (RJC)

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Sure-Fire Presentations

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American Bar Association
Special Committee on Youth Education for Citizenship

Introduction

by Arlene Gallagher

The purpose of this article is to give lawyers who are planning to work with students some practical suggestions that will make their presentations more effective. These "tips" should be helpful whether you are planning to visit a school one time on Law Day or will be going several times. Many of the following suggestions came from classroom teachers who have had extensive experience working with lawyers in the schools. Other suggestions came from lawyers. Though my examples are drawn from elementary schools, the tips should work well for all students.

Getting to Know Your Client(s)

If possible, meet with the classroom teacher before you go to the school, or at least have a telephone conversation to discuss your presentation and the class you'll be visiting. You might consider sending this article to the teacher and use it as a basis for your discussion. More than likely the teacher will have additional suggestions or might want to modify some of these depending on the class you'll be visiting.

An initial meeting is usually about what the lawyer plans to do but you will be even more effective if you also get some information about the class. Classes, as well as students, have a kind of personality. Ask questions about the class. Are they quiet? Active? Noisy? How is their attention span as a group? Are there certain students who always speak up or others who never do? It's easy to get monopolized by the very bright, verbal student and ignore the quiet child who may have an interesting point to make or question to ask.

The classroom teacher can be very helpful to you during your presentation, so don't hesitate to ask for assistance. You don't have to "be the teacher." Pat Jarvis, a fourth grade teacher in Rhode Island, says she feels free to interrupt a class discussion to clarify a student's question or suggest that the lawyer spend more time on a legal point. The teacher can work with you and handle any management or discipline problems. If you want students to sit on a rug with you, the teacher knows how to get them there. Inviting 30 nine-year-olds to come to the front of the room can cause a stampede.

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Pacing the Presentation

Children can't sit and listen as long as adults, so consider the students' attention span. Work out some hand signals with the teacher ahead of time so that you can get cues if you're going too fast, or if you need to alter the pace. Judy St. Thomas, former director of the Rhode Island Legal/Educational Partnership Program, recommends that if you have the time it would be very helpful to visit the class and observe before you do your session. Ask to see a law-related or social studies lesson, or one in which the students will be discussing something that touches on law or citizenship. This will give you a chance to hear their vocabulary level and how they verbalize their thoughts. It will also give you a chance to observe the teacher's style. All teachers are different, and their styles vary just as much as lawyers'.

Finally, ask the teacher to have name tags either on the students or on their desks. You will be amazed at how much more effective you will be when you use a child's name. Imagine how clients would feel if you didn't know their names.

Whatever topic or plan you come up with, try it out. Borrow some children if you don't have any of your own, but use children close to the age of the students you'll be meeting in school. Three years age difference doesn't matter much when you're thirty-five, and the difference is even less if you're sixty-five, but a seven-year-old is very different from a ten-year-old. Fifteen minutes with a small sample of children will be time well spent.

Time: The Limited Resource

Everyone's time is valuable. You want to make the best use of time possible, and scheduling a trip to an elementary school can be a problem. Most teachers are willing to be as flexible as possible, and they'll rearrange their teaching schedule to fit your availability if they can. However, don't agree to go during recess or lunch, two very important activities to children—and adults. Remember that when you're calling to schedule a visit the teacher probably won't be able to talk to you while class is in session. Try to call before or after school, or ask if you can call the teacher at home.

Thirty to forty-five minutes is about the maximum length of time to spend with elementary students, and that should include as much participation by them as possible. Once you have made the appointment, try very hard to keep it. Even twenty minutes late might mean that there's no point in going because the class is by then scheduled for something else. If you have to cancel, call as soon as you know that you can't make it. If you have to call that day, even a couple of hours warning will make it easier for the teacher to plan another lesson.

Your Place or Mine

Most lawyers think working with elementary students means going to the school. Marj Montgomery, a teacher in New-

tonville, Massachusetts, says not to overlook the glamour of having students come to your office, or meeting them in court. While you may think that a lawyer's office would be boring, it won't be to the children. Sitting at a lawyer's desk, or in a jury box, or taking the judge's chair for even a minute does a lot for a student's perspective.

Marj says that a big treat for her eighth graders is to go to Jay Flynn's office at Parker, Coulter, Dailey and White to discuss a mock trial they're preparing. They go in small groups of four or five, and this saves Jay's time because he doesn't have to travel to and from the school. Sixth, fifth and some fourth graders are perfectly capable of taking a mini field trip on their own. If you have students come to your office, don't have your calls held. They'll understand more about what you do all day if they see you doing some of it.

Choosing Your Topic: How Much Can You Cover

You probably know the story about the six-year-old girl whose mother was an engineer and father was a lawyer. One day she asked her mother a question about the law. "Why are you asking me," her mother said. "Daddy is the lawyer. Ask him. I know he'd love to talk to you about the law." "Yes," said the six-year-old, "but I don't want to know *that* much about the law."

Accept the fact that you won't be able to tell the class everything about the law. Try to focus on one or two legal principles or procedures and be satisfied that you will probably only be able to introduce these ideas, not cover them with any thoroughness.

A good topic is often one that relates to what students are currently studying, or one that interests them, or one that they can apply to their own lives. The classroom teacher may not give you a topic, and in that case you have the luxury, and the difficulty, of selecting one. This publication has several ideas. If you are reading a photocopy of this article given to you by a colleague, coerce that friend into letting you borrow the whole issue. Be sure to read the article by Lloyd Shefsky on page 6 which describes a classroom experience in vivid detail.

In Shefsky's strategy, the prop is inspired: chocolate bars. Candy will always capture a child's interest. Shefsky uses the prop very effectively, but you can use all kinds of props to enhance your presentation. The everyday trappings of your trade such as law books, contracts, or wills can be used to illustrate the point that laws are written down. A visual picture of the problem you are discussing will help children focus on the facts, identify the parties involved and consider the location of the problem.

Don't hesitate to use real anecdotes. Children like to hear about real things that happen to real people, so anytime you can make a point with an anecdote, do it. You can "borrow" your colleagues' anecdotes if you can't think of any interesting ones. Be ready to be open and frank with children, and don't be surprised if, when you say "Any questions," they ask you some personal ones. A favorite is: How much money does a lawyer make?

Modifying the Socratic Method

Use your education and training as a lawyer. It will enable you to ask questions in a way that leads students to think through a problem, analyze it, generate potential solutions, and consider the consequences of those solutions. Your skills as a negotiator can lead students to resolve conflicts in a manner that considers various viewpoints and results in consensus decisionmaking. If you can help children to acquire these skills, they can use them in their daily lives. Using this problem-solving approach, a legal principle or procedure can be explained in a context, not as an abstract idea.

The same principle or procedure can be illustrated in a number of contexts. For example, due process and our common law heritage contain basic ideas even small children can readily understand:

1. There should be rules made in advance, and there should be fair procedures to enforce them;
2. There should be a role for the people in determining the rules and in enforcing them.

After selecting the problem, try to think of ways in which you can have the students apply these or other basic points.

(continued on next page)

Peter Hannan

Guidelines for Role-Playing

Procedures

1. Present the problem or situation. Students must be given enough information to play the roles convincingly.
2. Get the class involved as quickly as possible. Don't spend a lot of time on the introduction.
3. Assign roles or solicit volunteers. If you arrange the students in pairs or trios, using the third student as an observer, an entire class may participate even if there are only two roles.
4. Role reversal can be a useful device when students appear unsympathetic to the opposing viewpoint, or when a student has been stereotyped by peers.
5. The following questions may be useful for focusing the follow-up discussion:
   - Were the players realistic?
   - Was the problem solved? Why or why not, and how?
   - What were the alternative resolutions?
   - Is this situation similar to anything you have personally experienced?
   - How did you feel playing that role?

Precautions

1. Keep it simple. Initial role-playing activities should be simple, but can become increasingly complex.
2. Don't belabor the introduction. Roleplay first and *answer* questions later.
3. Allow time to role-play several incidents; students will become less self-conscious and more aggressively involved with each incident.
4. Don't expect polished performances.
5. Don't worry about losing control of the class. It may be a bit noisy, but if you stick to the procedure, the noise will be productive.

(*Source:* The Methods Book: Strategies for Law-Focused Education. *Arlene Gallagher, ed. Law in American Society, Inc. 1979.*)

This will make your time with a class much more valuable because the teacher and students can continue to apply the ideas you have presented in other contexts.

The example included on page 5 shows how one lawyer works with a class of second graders. The activity can be done with older students, but a younger class has been chosen here to demonstrate that the law can be discussed with very young children. They may use simpler vocabulary, but young children can deal with complex ideas such as equality and justice.

Interaction: Rolling up Your Sleeves

Strive for some informality in the classroom so that children will feel comfortable talking to you. All of the teachers I spoke to said, "Tell the lawyers not to talk down to the children but tell them to talk on the children's level." Good advice but hard to know how to follow.

Try to take the students' perspective. You will probably be taller than most of them and you'll look like a giant to first graders. It's hard to interact with a giant. You can make them more comfortable by being physically on their level. Sitting on the floor or on a chair in a circle helps a lot with young children. Sitting on a desk helps with older students. Try to position yourself so that your eye level is the same as theirs'.

A Rolling Stone (Or Ham) Gathers No Moss

If the students are seated at desks and it's obvious that you are going to have to stand, don't stay at the front of the room. This position encourages you to fall into a lecture style which is ineffective with children, except for very short periods of time. Move around. Go up and down the aisles. Make direct eye contact with the student who is speaking. If you're a person who can "ham it up," do it.

Use the chalkboard, the oldest teaching tool. Don't be afraid to use a legal term like "habeas corpus," especially with older students. They'll love it. Just be sure to write it (print it for young children) on the chalkboard and define it.

A good way to break out of the lecture mode is to get the students talking. You will need to direct the discussion, though, or you might find yourself listening to endless stories about pets, new babies and favorite TV shows. You want to encourage discussion but keep to the topic. Don't be afraid to politely interrupt a child or to ask children to put their hands down while you're making a point.

Most interaction in classrooms goes from teacher to student and student to teacher, but with little student to student communication. You can encourage this very easily. A simple, "Jimmy, what do think of what Mary just said?" will help.

Have the children role play whenever possible. Lloyd Shefsky uses this technique very effectively with the chocolate bar problem. In the activity on page 5 the teacher and lawyer have the students pretend to Harry and Bill. Ask the class what they would decide if they were one of the parties involved, or if they were a judge or a member of a jury. After they have expressed one viewpoint tell them to switch. For example, "All of you who were Harry the Tap Dancer, now you're poor Bill who can't sleep at night because of all the tapping above him."

The Price of Success

If your visit goes well, you will probably be invited to come back. The good news is that it will take less time to prepare for your second appearance and you can use the same plan if you're meeting with a different group of children. Using the same plan several times gives you the advantage of being able to modify and improve based on your experience. I know several lawyers who would like to be able to try a case a second time, and this is your chance.

The not-so-very-bad news is that all of this does take time, but the compensation comes in the form of satisfaction and the thank you notes you'll receive from children; fees well worth the effort.

A pioneer in law-related education for younger students, Arlene Gallagher was the author of many elementary level books and articles on LRE. She was Professor Emerita at Elms College in Chicopee, Massachusetts, and a lecturer at Boston University.

The Case of the Professional Tap Dancer/Early Elementary

Arlene Gallagher

Here is a lesson law professor Ted Occhialino does with second graders. He usually joins the class after the teacher has presented the situation to the kids.

In this case two friends, Harry and Bill live in an apartment building. Harry lives on the second floor, directly over Bill. Their friendship is in trouble when Harry becomes a professional tap dancer but can only practice late at night, which keeps Bill awake.

Rights in Conflict

Harry and Bill lived in an apartment building. Harry's apartment was directly above Bill's. They were pretty good friends. Sometimes they went bowling together. Their friendship ended when Harry decided to become a professional tap dancer.

"I don't have anything against tap dancers, Harry," Bill said. "But do you have to practice *every evening*. The noise is driving me crazy."

"Sorry," said Harry. "But I have to practice if I'm going to be a pro. Besides, it's a free country, and I can do whatever I want in my own home. My home is my castle, as they say."

"Sure," said Bill. "But what about my rights? You're disturbing the peace. *My peace.*"

Harry and Bill have a problem. Their rights are in conflict. Conflicts are a natural part of human relationships. Everyone gets into fights or arguments once in a while. Sometimes people can resolve their conflicts but sometimes they cannot. A third person can often help to resolve the conflict between two people. That person has to be someone who can see both sides of the argument and come up with a solution that's fair to both people. In a court that "third person" is a judge.

Sorting It Out

Ted's strategy as a resource person is to help youngsters think clearly about the situation. He asks them to:

- Identify the problem;
- State some possible solutions;
- Consider the consequences of each solution;
- Make a decision that is legal and fair to all.

In this case, what are the two rights that are in conflict?

1. Harry's right to practice his profession in his own home. Many people do this.
2. Bill's right to have peace and quiet in his own home. People have a right to a reasonable amount of quiet in their home.

There are many ways to resolve this conflict and some solutions are better than others because they are fairer to the people involved.

Ted uses a role play to state these points. He tells half the class to pretend to be Bill and the other half to be Harry. He leads a general discussion, calling on Bills and Harrys. (For older children you can have them pair up and try to resolve the problem in a way that satisfies both parties.)

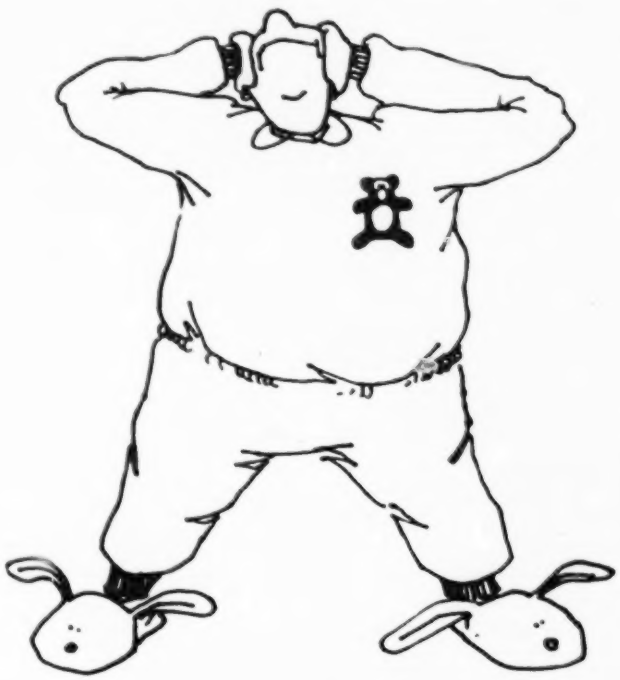
Sometimes the class comes up with some interesting solutions, such as carpeting Bill's ceiling or having them switch apartments. It is important to encourage children to try to resolve conflicts initially without third party intervention. The court should not be seen as a first resort for dispute resolution.

Or you can present possible solutions and ask the children to decide if they are fair.

This problem can also be used to discuss the basic point that "there should be rules made in advance and fair procedures to enforce them." There was no rule in this apartment against tap dancing. Would it be fair for the landlord to make one after Harry started tapping? What if there was a rule against pets and Bill got a huge dog that barked every time Harry tapped? What about Bill's right to a certain amount of peace and quiet? How can this be balanced with Harry's right to practice his profession?

Encourage children to discuss why it is important to know the rules ahead of time. Ask them about games they play and the rules for them. What happens if someone breaks or changes a rule?

"Rights in Conflict: The Case of the Professional Tap Dancer," from Living Together Under the Law: An Elementary Education Law Guide. *Author: Arlene F. Gallagher, 1982. Publisher: Law, Youth, and Citizenship Program of the New York State Bar Association and the New York State Department of Education, Albany, New York, 12207.*



Teaching About Contracts/Grades K-4

Lloyd E. Shefsky

Can little children understand contracts? Should they be taught to understand contracts? You bet! My personal experience shows that certain rudimentary principles of contract law are understood intuitively by many, if not all, five-year-olds.

Here's a step-by-step outline for introducing lower elementary students to some of the main concepts involved in contract law as the "stuff" of attorneys' work. This material is introduced in a way that youngsters find exciting and interesting. The strategy is a role-play in which elementary students participate in negotiating a contract and resolving a dispute from knowledge they already possess and experience they already have.

The genesis of the plan presented below was an announcement by my five-year-old son that the parents of his kindergarten class were invited to explain what they did for a living. Parents were to be scheduled individually on different days.

How was I to explain to kindergartners the working world of an attorney? If few adults fully understand the legal issues of business law, how could I explain them to a class of five-year-olds, in spite of their above-average intelligence, sophistication, and positive orientation to the law?

Choosing a Topic

The teacher of my son's class had recommended that I limit my presentation to a maximum of 30 minutes, preferably less. Because the attention span of elementary students is short, the presentation had to be both stimulating and concise. For this reason, I quickly rejected a description of a day in my working life as well as a description of a complicated and/or unusual case. (I am pleased to report that at the end of my 30-minute exercise, when attention spans were indeed beginning to show signs of waning, the teacher informed me that I had held class attention far longer than those parents relying on oration.)

There are additional constraints when addressing K-4s in contrast with older students. Limited life experience and substantive knowledge dictate a teaching exercise set up ahead of time within tight limits.

Contractual arrangements permeate our society, and disputes over these arrangements are everyday occurrences for attorneys and laymen. Children, too, enter contractual relationships whenever they go to a movie or borrow library books. Children negotiate simple contracts whenever they promise to relinquish one comic book for another or trade baseball cards.

Disputes may arise after contracts are consummated for a variety of reasons—one party cannot or will not fulfill the agreement or is perceived as not living up to all or part of the terms of the contractual agreement. In the example of the children's exchanged promises, a comic book may have missing pages.

A complex legal issue that frequently arises is known formally as a "mistake of fact." According to Black's Law Dictionary, a "mistake of fact" is an unconscious ignoring or forgetting of a fact relating to a contract, or a belief that something material to the contract exists or has existed when, in fact, it does not nor ever has existed. It is not, however, a mistake caused by a party's neglecting a legal duty. A "mistake of fact" can be mutual or not, each with differing legal results.

Negotiating a contract and then resolving a dispute over a mistake of fact was the focus that I chose for explaining my work as an attorney. This is a legal situation arising again and again in the real world of business and, indeed, everyday life. The next step was devising and planning an appropriate situation for "acting out," so that I could instruct my kindergartners by allowing them to participate.

Planning Ahead

When legal professionals accept requests to contribute to law-related education projects, careful preparation is perhaps the most important prerequisite, just as it is for trial or negotiating a transaction. No matter how short and simple the instructive session is to be for the K-4s, careful preparation is vital. An ill-prepared speaker can fall back on ad hoc discussion and "thought" questions when facing high school students; you can't disguise lack of planning when instructing K-4s.

My preplanning for my son's class involved asking him about the "sweet-tooth" preferences of his classmates. I discovered that at least two of them were very fond of chocolate bars, but that one was devoted to plain chocolate and the other strongly preferred chocolate with nuts. It is advisable to know the likes and dislikes of several classmates ahead of time in case substitutes are needed.

Bringing Props

The next step is to bring props. You should bring your own to class rather than assume that an elementary school is prepared for all contingencies. My props were few and very easy to assemble:

1. A black crepe-paper "robe" suitable for a kindergarten-size judge. A sheet of black crepe (or tissue) paper available at most variety stores works quite well once a hole is cut in the center to go over a child's head.
2. Enough chocolate bars for the entire class, some plain and some with nuts. Only one of each kind will be used initially and shown to the class; the rest should be hidden from view. Unknown to the class, however, one of the two bars in full view is actually an empty wrapper made to look like an actual candy bar. (Substitutions can be made here so long as there are two items similar in intrinsic value but variable in their preferred value.)
3. A tape recorder. This was originally for my own later enjoyment, but recording the class exercise can also serve as a useful learning device for the entire class. Children love to hear their recorded voices, and the teacher can play back the classroom activity, perhaps on the following day, for a short discussion or a question/answer period about simple kinds of contracts the children would understand.

Involving Students as Active Participants

Although much has been written about the value of role-playing as a teaching device, there is some reluctance in using it with lower elementary students. My experience will hopefully dispel this reluctance. As soon as I arrived in class, I assigned one child to be the judge (in my case my son), followed by "hands up" voting on preferences for chocolate bars (with or without nuts). I then asked for two volunteers, one to represent each candy bar preference, with my selection guided by what my son had told me in the planning stage. A single bar of each of the two types of chocolate bars was placed on the "judge's" table in front of the class, and each of the two volunteers was asked to stand behind but not touch the bar he least preferred. I then told these two students that, even though each had received the kind of bar he did not particularly like, they were both free to talk to each other and work out an arrangement to exchange the assigned bar if they wanted to do so. The one condition I specified was that each must speak into the tape recorder, one at a time. The two volunteers quickly discussed an exchange of chocolate bars to satisfy each other's preference. When both were satisfied that a "deal" had been reached, I suggested each pick up the candy bar he had obtained in the "negotiated" exchange.

If the negotiating session was consummated quickly, the concluding portion of the exercise involved a more complicated legal issue. In a business deal, one party does not always get what he thinks he bargained for. Thus, in the classroom, one of the children was very surprised and chagrined to discover that he had received an empty wrapper and not the chocolate bar he assumed was there. When I asked the "cheated" child to express his feelings into the tape recorder, he expressed every legal concept of "mistake of fact." Interestingly, at no time did he resort to an allegation of fraud, since it was clear that the child who had received a real candy bar knew nothing of my deception.

The child with the candy bar, of course, had quite different opinions about what constituted a fair resolution, saying that "fair is fair" and "a deal is a deal." Having exhausted all of his logical arguments, the child with the empty wrapper then suggested that perhaps they should split the candy bar. The owner of the bar promptly rejected this suggestion, commenting that he couldn't understand why his classmate would want to split the bar since the other boy didn't even like that kind of bar in the first place.

During all of this discussion, it should be noted that neither child became belligerent or teary. My role as attorney-leader involved some directing, but directing should be minimized as much as possible to allow the children to handle their own bargaining and dispute settlement. Once assignment of roles had been made and the few instructions given, I found my main job was to act as occasional prodder when talk bogged down.

Ultimately, the judge was called upon to decide the dispute in a brief, "mini mock trial." He concluded, in five-year-old language, that while there was merit on both sides, he felt his two classmates should split the sole candy bar. No doubt, a judgment based on fairness, although one cannot ignore the fact that he was concerned about his ability to coexist with classmates. (Is that very different from our common law tradition?)

Once the verdict was handed down and accepted, without any adult coaching, I then distributed my surprise supply of hidden candy bars to the entire class, including the child with the empty wrapper.

Concluding

The happy class listened to a brief word about what I do for a living and the role of deals and disputes in this work. I explained very simply that people constantly get into arguments, because one person thinks that a situation, not necessarily another person, has been unfair, like the child who had expected a candy bar but got only paper. When someone feels hurt at losing to another what he thinks should rightfully be his, he and the other each hire an attorney to solve the problem. Because lawyers are experienced and know the rules, they can make a deal for the person each represents (the client) and then help decide a fair result if the deal later turns out differently than expected. Because lawyers are not so involved—they do not get the candy bars from the agreement—they can more easily reach a bargain or deal and resolve a later dispute. Finally, if even the lawyers can't agree or persuade their clients to agree, the lawyers and clients can go to court and allow a judge to make a decision.

A major value of this little exercise was its revelation about the capacity of lower elementary students to apply certain concepts of fairness and common sense which, after all, underlie law in general. The arguments made by the two student participants sounded amazingly familiar to anyone who has witnessed lawyers arguing the merits of a disputed transaction on behalf of clients. Although the language and presentation of lawyers are more sophisticated, the youngsters' reasoning process was very similar to theirs. The judge's verdict, too, was very like the verdicts in numerous court cases following meetings of counsel in the judge's chambers.

The children began to learn about the system of formal rules and informal practices which institutionalize the same rules of fair play that most of them have already begun to internalize. A definition of what is just may vary among this age group, as it does among a group of adults, but it exists nonetheless. The brief exercise in contracts reinforced the children's understanding that even though events may seem unfair to one party, there is something that can be done to rectify them in a reasonable way.

The ability to exercise control within the rules was another valuable lesson. Although I had set up the rules of "our" game ahead of time, the student-volunteers, representing the entire class, were allowed to negotiate their own deal without outside interference. Only when the bargain struck by them was found lacking an expected element—a candy bar for each—was it necessary to rely on formal "rules" for achieving a fair, if not totally satisfactory, resolution. In their ensuing arguments, this class learned firsthand some of the rudimentary skills of conflict management.

The final lesson is that deals and business arrangements of many types may not always be completely satisfying to every party, but a sense of fairness and justice can be achieved within the limits imposed by factors outside the control of anyone. And that, after all, is the purpose of law.

Lloyd E. Shefsky is a senior partner in the Chicago law firm of Shefsky & Froelich, Ltd. He specializes in tax, financial, and business law matters, and is the author of numerous published articles.

No Vehicles in the Park

The town of Beautifica has established a lovely park in the city. The city council wished to preserve some elements of nature, undisturbed by city noise, traffic, pollution, and crowding. It is a place where citizens can go and find grass, trees, flowers, and quiet. In addition, there are playgrounds and picnic areas. At all entrances to the park the following sign has been posted:

NO VEHICLES IN THE PARK

The law seems clear but some disputes have arisen over the *interpretation of the law*. Interpret the law in the cases that follow keeping in mind the *letter* of the law as well as the *intent* of the law.

Case 1
Two police cars are chasing a suspected bank robber. If one cuts through the park, he can get in front of the suspect's car and trap him between the patrol cars.

Case 2
An ambulance has a dying car accident victim in it and is racing to the hospital. The shortest route is through the park.

Case 3
Mrs. Thomas wants to take her baby to the park in his baby buggy.

Case 4
A monument to the town's citizens who died in the Vietnam War is being constructed. A tank, donated by the government, is to be placed beside the monument.

Case 5
John Smith lives on one side of the town and works on the other side. He will save 10 minutes if he drives through the park.

Case 6
There are many trash barrels in the park so that people may deposit all litter there, hence keeping the park clean. The sanitation department wants to go in to collect the trash.

Case 7
Some of the children who visit the park want to ride their bicycles there.

Case 8
Several of the town's citizens have made a living for several years by driving people around scenic spots in the city in an old-fashioned horse and buggy. They want to drive people through the park.

Rules, Rules, Rules

Focus on the Constitution

People can establish rules that help them to live together in peace and freedom.

The Setting

These initial activities help children to begin thinking about rules in the classroom or in a community group. Here they are asked to make a list of the rules governing their lives. These rules become the basis for their own constitution, which will be formally drawn up and signed later.

Children reflect on when and why rules are needed and what criteria can be used to judge the rules.

Getting Started

Begin by telling the children that you want them to play the Eraser Game. Divide the group into two straight lines and say something like "Okay, everybody, let's play the Eraser Game." Don't say anything else. The children will probably look very confused and ask you—"How do you play it?" Lead them to see that they need to know the rules in order to play the game.

Working with the Ideas

1. Observe that to play games together people need rules and that to work and live together people also need to have rules.
2. Ask the children why people need rules in families, on playgrounds, on buses, in schools. List each child's response and review all to consolidate ideas. *Be sure to put this list on a chart for later use.* This listing can later serve as the basis for the preamble of the group constitution.
3. Remind the children of the Eraser Game that they started to play earlier. Tell them that you are going to give them time to play that game now and that you are going to give them some rules to use. Work with the children as they play the game. Give the rules; discuss issues that arise.
4. Refer to the criteria for a good rule that you have written on the board ("A rule should be easy to follow"). Tell the children that there are more ways you can tell a good rule and post "Tests for Good Rules" on a chart.
5. Ask the children to consider rules that would not pass these tests, as: "Children coming in first from recess must be third in line and second to go to lunch while children coming in last must be first in line and third to go to lunch." This rule is certainly not simply stated and understood and it would probably also be very difficult to enforce!

Tests for Good Rules

A rule should be easy to follow.

A rule should be simply stated.

A rule should include *only* activities we are able to perform.

A rule must be enforceable.

A rule must not go against another rule.

A rule should have a penalty for breaking it.

6. For a group that already has rules (written or unwritten), have the children begin by identifying and writing down these rules. Then list any other rules the children believe the group needs. The group will then have two sets of rules—"Rules We Have" and "Rules We Need."
7. For a group that has not established any rules, start them off by making and listing some on the chalkboard.
8. With younger children, talk over the rules together and write the rules on a chart for all to see.
9. Where children can write easily, pair them and have them work together to develop and write their rules. Then develop a master listing of rules drawn from each pair:
   - select a pair of the children to tell one of their rules;
   - write that rule on the chalkboard, in the children's own words;
   - record the number of pairs that also have that rule on their lists.

   Repeat the above procedure until all the rules that the students have identified are listed together. Note that this process will require sorting out the rules that are alike but are not stated the same and having the children agree upon the statement that is recorded on the master list. *Be sure to record all lists and transfer them to a chart for future use.*

(continued on next page)

The Eraser Game

1. Tell the first person in each line to pass the eraser from the front to the back of the line. Tell the last person to bring the eraser up to the first person in the line.
2. After students begin to play, the teacher is to interrupt the game at intervals to give one of the following directions:
   - Oh, you are to pass the eraser with your eyes closed.
   - Oh, you must pass the eraser with your left hand.
   - Oh, everyone should be on their knees.
   - Oh, you are to come backwards to me when you bring the eraser.
3. After each interruption, ask teams to begin again.
4. Stop to review problems with the children. Note that they had difficulties because of the way that the rules were given. Lack of agreement about the rules and constant change of direction lead to confusion.
5. Write "A rule should be easy to follow," on the board. Work with the group to develop a clear set of rules for the Eraser Game. List the children's suggestions, then vote to select a few simple rules for the game.
6. Play the game again to demonstrate that clear rules and directions make for a good experience while playing together.

(Adapted from "The Buckle Game" designed by Harriet Bickleman Joseph.)

10. Have children check to see if each rule they have identified passes the tests for a good rule above. Put a star beside each of their rules which does. Decide whether the rules that do not have a star (have not passed the tests) should be rewritten or eliminated. (Rewrite the rules together or assign rewriting projects and have the group consider reports later.)
11. Make a final chart of rules (with pictures to match) and post prominently on the wall. Give each child a copy to take home. Tell the group to discuss these rules with their friends and parents and come prepared to review them the next time the group meets.

This activity is based in part on material adapted from: Rules, Rules, Rules, *developed by David T. Naylor, et al., the Ohio State Bar Association, 1980; and from* Elementary Law-Related Education Source Guide, *grades 3-6, Cleveland Public Schools, 1981.*

Guidelines for Brainstorming

The brainstorm is a very useful classroom strategy because all students, regardless of level of academic achievement, can participate equally. It is nonthreatening because no evaluation is allowed, and it does not require prior preparation. In addition, a significant amount of information can be gathered quickly.

A critical concern, of course, has to do with what one chooses to have a class brainstorm about. One alternative would be to focus on civil and criminal law and classify the "ideas" into these two categories. Students are often surprised that generally they are more often in contact with the social aspects than with the punitive aspects of law. Another alternative might be to lead a discussion on the effects of breaking some of the laws they mention. This can lead into a discussion of felonies and misdemeanors.

Procedures

1. Post the "Rules of Brainstorming." These should be explained briefly.

   Rules of Brainstorming

   1. Say anything that comes to mind.
   2. Piggybacking on the ideas of others is good.
   3. Don't evaluate or criticize what others say.
   4. When you can't think of anything else, wait a minute and try again.

2. Tell students to call out their ideas (no hands). Post these as they are called out.
3. Give students a few "get started" suggestions if it is obvious that students have not gotten the "idea."
4. Keep going until it is obvious that nothing new will be said, but be willing to allow enough time for everyone to get into the swing of things.
5. Categorize the "ideas" e.g. particular laws, enforcement agencies, etc.

(Source: Law in the Classroom, *by Mary Jane Turner, Social Science Education Consortium, ERIC Clearinghouse for Social Studies/Social Science Education.)*

Guidelines for Using Dilemmas

Activities that require students to take positions on or make decisions about moral and ethical issues can be very effective in developing "gut-level" understanding of subject matter and concepts. Such activities often call upon students to infer reasons or information, challenge unsupported statements, and explore their own personal value positions.

In using dilemmas with students and other groups, it is important to remember that there is usually no one "right" answer to any given question, and that it is not useful to attempt to reach a consensus of opinion. Rather, the objective is to encourage each participant to develop a position based on sound reasoning and relevant information.

The Social Studies Curriculum Center at Carnegie-Mellon University has identified four basic steps for using dilemmas with students:

1. *Confronting the dilemma.* During this phase, the resource person helps students understand the dilemma and clarifies the situation or the terminology used to describe it, if necessary.

2. *Deciding on a position.* The resource person can help students do this by giving them time to think about the issue and the various alternatives, by asking them to write down their reasons for taking those positions, and by helping students brainstorm reasons for various courses of action. At some point in this stage it is useful for the resource person to ask students to indicate their positions by a show of hands; if more than 70 percent of the students are in agreement, the resource person should introduce some new alternatives in order to stimulate interest and promote a better discussion.

3. *Testing reasons for positions.* This should be done first in small groups and finally with the whole class. The task of the resource person during this phase is to encourage students to challenge one another's reasoning and ask questions that help clarify students' thinking processes. This step usually requires the most time.

4. *Reflecting on the discussion.* During this "summing-up" phase, the resource person should help students summarize the various alternatives presented and the strongest reasons for each one. The resource person may also want to introduce some new reasons that students have not thought of. No attempt should be made to achieve consensus or closure; rather, the discussion should end on an open or incomplete note.

(Source: Law in the Classroom, *by Mary Jane Turner, Social Science Education Consortium, ERIC Clearinghouse for Social Studies/Social Science Education.)*

Step One: What to Tell Students

Have you ever purchased an item and found it to be defective? Although there are many quality products in the marketplace, occasionally you may buy a product that is not satisfactory. If this occurs, there are inexpensive ways to protect your rights as a purchaser.

Of course, the best way to protect yourself is to be an informed consumer. Before deciding to buy anything:

- make sure you know what you *want* (or *need*) and what you are likely to *get*;
- shop around before you buy;
- check guarantees/warranties carefully before you buy;
- before you buy, ask about the policy on returning or exchanging goods;
- don't agree to pay more than you can afford;
- find out about refund policies if you change your mind or are unable to complete payments (if purchased on credit or lay-away plans); and
- if you're unfamiliar with the product, ask someone you trust who has used this product, or call a consumer agency, such as the Better Business Bureau (see your local phone book for phone numbers of consumer protection agencies) to find out if there are any complaints about the product.

By following these tips you can avoid a lot of problems. Still, even the most careful buyers will sometimes run into trouble, such as a defective product. In such a case, you need to make a complaint to the vendor (seller). You should speak to the returns department representative. Be firm, clear and polite. Explain the problem and say what you want the store to do to correct it. You should also have with you any papers relating to the complaint—sales receipts, guarantees, etc. If the problem isn't solved, ask to speak to the supervisor/manager. If that doesn't work, then write a letter to the owner of the business, or sales representative of the company that makes the item, or even the president of the company. Very often, these methods are enough to solve the problem because most businesses want to please their customers and will do what they can to make sure that you're satisfied.

If there's still a problem, you can file a complaint with a local agency or organization which deals with consumer problems (the Better Business Bureau or the Chamber of Commerce) or with a consumer action program of a local paper, TV or radio station. This often brings very quick results. There are also state agencies, as well as federal agencies, and consumer advocate organizations you can contact. As a last resort, you can take legal action.

If you cannot settle a consumer complaint any other way and decide to take legal action, hiring a lawyer and filing a lawsuit can be very expensive. However, many states have an inexpensive way for a consumer to legal action. This is a special court usually known as small claims court (which can award money up to several thousand dollars in some states, and up to several hundred dollars in all states). Small claims court has many advantages. The procedures are simple and conducted without difficult legal terms. In some states, you may be represented by a lawyer if you wish. In other states, lawyers are not permitted. Filing a suit is inexpensive. Court costs usually run ten to twenty dollars.

Usually you can file a suit if you are older than 18. In some states you must be 21 or older to file. If you are younger than the legal age, you an adult must go with you when you file a suit. If you are considering filing a complaint, check with your local small claims court for local regulations.

Case Study: Johnson v. Wheels

Pat Johnson, 18, while shopping for a bicycle, passed the "Fast Wheels Bicycle Shop" and noticed a sign that stated "WAVA-500 10-SPEED BICYCLE—$149.00 VALUE—TODAY ONLY $99.00." Pat, believing that this was a great deal, entered the store and was greeted by Jean, the salesperson.

Pat looked the bike over and found it to have everything needed. After reading the Wava manufacturer's 90-day warranty attached to the handlebars on the bike, Pat agreed to purchase it.

Pat paid for the bike with a personal check, and Jean gave Pat a sales receipt for the purchase price plus tax. Pat took the bike home and assembled it.

Three weeks later, when Pat and a friend, Billy, were riding their bikes to school, the chain on the Wava-500 fell off. After several failed attempts to put the chain on the sprocket wheel, Pat gave up and walked to school. After school, Pat and Billy tried to fix the bicycle, again without success.

Remembering the manufacturer's warranty, Pat decided to return the bike to the shop. At the "Fast Wheels Bicycle Shop," Jean, the salesperson, told Pat that the bicycle couldn't be returned. Pat asked to speak with the owner, Tracy Wheels, who explained to Pat that the bicycle could not be returned after being ridden for several weeks.

The next day, Pat filed a suit in small claims court.

QUESTIONS FOR DISCUSSION

- Who is the plaintiff in this suit?
- Who is the defendant?
- Should Pat bring any witnesses to small claims court? If so, who? Why?
- Should Tracy Wheels bring any witnesses to small claims court? If so, who? Why?
- What papers, if any, should the parties bring to court?
- If you were Pat, what would you plan to say in court?
- If you were Tracy Wheels, what would you plan to say in court?
- If Pat does not win the suit in small claims court, what other action, if any, could he take?

Activity: Small Claims Court Simulation

Assign various members of the class to play the roles of the plaintiff (the person filing the suit), defendant (the person

against whom the suit has been filed), and witnesses in the case described in the box "Case Study: *Johnson v. Wheels*. Plaintiffs, defendants, and witnesses should read the facts of the case and decide what they will say in court.

Invite a local attorney or judge to visit your class and play the role of presiding judge in your small claims court simulation. If this cannot be arranged, choose a student to be a judge. (Also choose a student to play the court clerk to announce the case, assist the judge, etc.) At the end of the trial, the judge should announce his/her decision and the reason(s) for that decision.

Note: If possible, the hearing should follow the same procedure used in a real small claims court. You can be guided by the visiting judge or attorney or by your own visit to a court. (Call your local county courthouse to find out if there is a small claims court in your area. If there is, arrange to visit the court in session. During your visit, note the kinds of cases heard and the roles of the parties. Also note the kinds of evidence presented and the decisions of the judge.) Typically, in court, after the case is announced, the plaintiff is asked to present his/her side first. After the plaintiff's presentation is completed, the defendant may present his/her side. Then the judge renders a decision.

Elenor Taylor is Director of Law and Government Programs at the Constitutional Rights Foundation in Los Angeles. Richard Marcroft was also on the staff of the Constitutional Rights Foundation. Portions of this article are adapted from materials in Living Law: Civil Justice, *from the Constitutional Rights Foundation and Scholastic, 1978.*

Alternatives

Medition and the Adversary Process/Grades 5-8; 9-12

Melinda Smith

Because law-related education focuses on the judicial system, and because mock trials are an appealing strategy, we often overlook nonadversarial methods of conflict resolution.

The following strategy is intended to contrast mediator with the more familiar adversarial process. It can be used with students in grades five through high school. The cases used can be changed according to the age and sophistication of students.

The Two Cases

CASE 1 (GRADES 5-8)
Plaintiff: Tony
Defendant: Jody

Jody was sick and couldn't go on her paper route, so she asked Tony to do it for her. She agreed to pay him $2. Tony delivered the papers, but didn't put plastic bags on them. It rained and the papers were ruined. Jody refused to pay Tony the $2.

CASE 2 (SECONDARY)
Plaintiff: Cecil Jackson
Defendant: Sarah Miller

Sarah Miller moved into a house next door to Cecil Johnson, a retired man who spends his time landscaping his yard. Mr. Jackson had grown an eight-foot hedge between the two houses. According to Sarah, the hedge blocked her view of the street when she backed out of the driveway, so she asked Mr. Jackson to trim it. After several weeks with no response from Mr. Jackson, Sarah cut down the hedge because she believed it to be a danger to her. Mr. Jackson is furious and wants Sarah to replace the hedge at a cost of $435.

Adversarial Action

Explain to students that they will experience two different methods of resolving disputes: the adversary process of the court, and the mediation process, which takes place in neighborhood justice centers in cities throughout the country. Divide the class into groups. Explain that the groups will first role play a case using the adversary model. One person in each group should play the plaintiff, a second the defendant, and a third the judge. Explain the court procedure as follows:

1. Judge asks plaintiff to give his side of the story.
2. Defendant then gives his side of the story.
2. Judge can ask questions, during and/or after hearing from the parties.
4. Judge makes a decision and delivers it.

Conduct simultaneous role plays. They should last about 10 minutes. Then with the entire group ask the following questions:

1. Was the role of judge difficult? What did they like or dislike about being judges?
2. Did the plaintiff and defendant think they were treated fairly? How did they feel about the judge's decision?

Mediation in Action

Explain that students will next mediate the same case. Allow at least 15 minutes for this role play. The judge will become the mediator, and plaintiff and defendant will now be called the disputants. Have the plaintiff and defendant switch roles from the first role play. Explain that the mediator does not make a decision in the case. His/her role is to help the disputants reach an agreement. The procedure is as follows:

1. Mediator explains that in mediation the two parties will make their own agreement. They must not interrupt each other. If the need arises, the mediator will talk to each party separately.
2. The mediator asks each disputant to define the problem as he or she sees it and express feelings about it.
3. Each disputant defines the problem and expresses feelings about it.
4. The mediator restates views of both disputants. The mediator asks questions to clarify issues.
5. The mediator asks disputant #1 if he or she has a proposed solution for the problem. The mediator then asks disputant #2 if he or she agrees. If not, the mediator asks disputant #2 for a proposed solution and asks disputant #1 if he/she agrees.
6. If there is an agreement, the mediator restates the agreement to make sure both disputants approve.

7. If no agreement is reached, the mediator talks to each disputant separately, asking each how he or she is willing to solve the problem. Then the mediator brings them together and asks them to offer their solutions. The mediator will repeat step six if an agreement is reached

Making Comparisons

After the allotted time, bring the class back together and debrief with the following questions.

1. How did being a mediator compare with being a judge? Was it easier or more difficult?
2. Did disputants think they were treated fairly? How did they feel about the process?
3. Was a solution reached? How did it compare to the judge's decision?
4. What are the advantages and disadvantages of each method of dispute resolution? What kinds of conflicts are best suited for each method?

Melinda Smith is Director of the New Mexico Center for Dispute Resolution.

Fundamental Freedoms

Teaching About Search and Seizure/Grades 9-12

Susan Wise

Here is a "model" class on the Bill of Rights, search and seizure and student rights and responsibilities.

Before going to class, get to know the subject. Review the brief description of *New Jersey v. T.L.O.* elsewhere in this publication.

Why You Are Here

- To introduce to students the meaning of the Fourth Amendment's protection against unreasonable search and seizures and the source of that protection in the constitutions of the United States and your state.
- To have students apply their Fourth Amendment protections to situations which arise within a school setting.
- To have students understand the reasons why limitations exist to students' Fourth Amendment protections.
- To have students recognize how the responsibilities of school administrators may conflict with students' Fourth Amendment protections.
- To give students the opportunity to discuss constitutional issues which directly affect them.

Procedures

Classroom activities can be performed within the 45 minute time period. Questions to start you out include:

- "Do you have any rights!"
- "What are they?" (This can produce a myriad of variations.)
- "Where do they come from?" (Here you can start from the particular [school rules] and go all the way to the Constitution.)
- "Where does it say in the Constitution that you have right not to be searched?" (Here you get into the Fourth Amendment. Use concrete examples: Find a student with a purse, gym bag, etc. and ask if you can look into it. If not, why not?)

Following are four hypotheticals, any of which you can use to spark discussion of rights and responsibilities in a school search situation. (One way to relate the situations more directly to the students you're talking with is to change the names of the students in the hypotheticals to names of students in your class.)

You can either read the hypothetical to the class or summarize it for them before getting into the suggested questions.

Whose Locker Is It?

Dwayne's high school had been having many problems with vandalism. In the past week there had been a fire in the girls' restroom, four windows broken, and a small explosion caused by three cherry bombs in the boys' locker room in the gym. Rumors were running all through the school as to who caused

the explosion. One such rumor made it to the principal's office when two students told the principal that they had heard that Dwayne had a bag of cherry bombs in his locker.

The principal called Dwayne into his office and asked him if he had any cherry bombs in his locker. Dwayne said he did not, but the principal was not convinced. He told Dwayne that if he did not have the cherry bombs in his locker, then he would not mind the principal's opening the locker to make sure. Dwayne said he did not want anybody going through his locker and would not open it up for the principal.

The principal became angry and said he would open it anyway and called the custodian to bring the master key. Dwayne became very upset and yelled at the principal that he knew his rights and that the locker was his and no one could open it without his permission. Disregarding what Dwayne said, the principal went to Dwayne's locker, opened it with the master key and found all kinds of art supplies which had been missing from the art room, but found no cherry bombs.

SUGGESTED QUESTIONS FOR DISCUSSION

Do you think the principal had good reason to open and search Dwayne's locker?

Do you think the principal had a responsibility to the students and teachers to follow all leads in order to find out who set off the explosion in the boys' locker room?

Who do you think owns the lockers in schools?

Can you think of how use of a school locker may be different from use of a locker in a bus station, or a post office mail box?

Do you think a principal should have the right to open and search a student's locker without that student's permission?

Can you think of any situations where you might open and search a student's locker without permission if you were a principal?

Did Dwayne know his rights?

May a principal open and search a student's locker without the student's permission?

Do you think Dwayne set off the explosion in the boys' locker room? Why? Why not?

Did the principal find in Dwayne's locker what he was looking for?

Do you think a policeman can open a student's locker without that student's permission?

What does a policeman need to have before he/she could open a student's locker?

What is a search warrant? When is one used? Who uses search warrants?

Warriors v. Giants

The past two weeks at the high school had been terrible. Four students were sent to the hospital, two students arrested, and all the students were frightened about their safety as a result of a gang war between the Warriors and the Giants taking place not only in the school but also in the community. The two gangs began warring when the Warriors blamed the Giants for slashing the tires on the car of one of its members. The Giants denied having done it, but soon tempers began to rage and within two weeks there was a near riot in the school cafeteria resulting in the injuries and arrests.

In order to ensure the safety of the students and the staff, the principal decided that each student would be frisked upon entering school to check for weapons. Many of the students thought this was a good idea, but others believed the principal had no right to frisk them and would not allow themselves to be frisked. Some of these students were not members of either gang. When they refused to be frisked, they were not permitted to enter the school.

SUGGESTED QUESTIONS FOR DISCUSSION

Why did the principal decide to frisk each student as he/she entered school?

What exactly takes place when a person is frisked?

Does a principal have the responsibility of maintaining a safe school?

Do you think that by frisking each student as he/she enters school the students and teachers will be safe? Why? Why not?

Do you think the principal has the right to frisk students before they enter the school?

Why would a student object to being frisked before entering school?

Would you mind being frisked each morning before you entered school? Why? Why not?

Do you think a policeman instead of the principal should be the person doing the frisking at the school?

What if a parent had a meeting at the school? Would the principal frisk the parent?

Do you think the principal frisked each teacher as he/she entered the school?

Do you think the teachers would object to being frisked before they entered the school each morning?

Missing Books

The school librarian, Mr. Richland, informed the social studies department faculty that three expensive books on ancient Greece, which had been purchased recently by the school for reserve use but had not yet been checked in, processed, and labeled by the library, were already missing. Miss Sullivan, a world history teacher, said that she had recently given her students a term paper assignment and that she knew that one boy had decided to write about the government of Athens. She suggested that the librarian check with the boy, Bruce Dandridge.

Because of a rash of book thefts during the past year (hundreds of dollars worth of books had "disappeared"), Mr. Richland decided to take the information directly to the school principal. He asked that Bruce's locker be inspected to search for the books.

The principal, in the librarian's presence, opened the boy's locker while Bruce was in class. They discovered the new ancient history books, which had not been checked out from the library. When confronted with the evidence, Bruce admitted that he had taken them, but argued that his right to privacy had been violated by the locker search. Because he had been in some disciplinary trouble before in school, and in view of the strict school rules against misappropriation of school property, a suspension hearing was called, and Bruce came with his parents' and their family lawyer.

Questions. What are the main issues raised in this case? How does the interest of Bruce's privacy balance out against the school's interest in preventing theft? If this case were to come before a court, how do you think it would be decided?

Police Called In

Frank Perkins had a free period plus his lunch period back to back on Monday. Since school rules permitted students to leave the grounds when they did not have class commitments, he went downtown to the Sound and Fury record store. The store owner, Jack Maloney, was sure that he had seen Frank put one

or more albums under his coat and leave the store without paying for them, but he was unable to catch up with Frank.

As an independent businessman, Mr. Maloney was concerned about the increased costs of shoplifting. He thought he recognized Frank as a student from nearby River View High School, and upon checking with the school over the phone he was able to ascertain his name.

Later that afternoon, Detective Shableski of the local police came to the school following a complaint from Maloney and asked the school principal whether he could have permission to search the boy's locker for the records. Consent was given.

Questions. If stolen record albums are found, are they legally admissible evidence? A police search without a warrant is valid only if consent has been given. Who has the authority to give consent? Only Frank Perkins?

If you are a student in school, do you give to the administration the right to consent to a search of your locker when it issues you a locker? If a locker is protected from warrantless search, can you be forced to give up that protection by signing a release?

An Actual Warrant

Another way of initiating a discussion of search and seizure with students is to pass out copies of a sample search warrant (for an example, see page 12 of the Spring, 1978, issue of *Update on Law-Related Education*) and discuss its contents and its use. (Make sure to have enough copies for everyone made ahead of time.)

After students have examined the warrant and shown that they understand the terminology, you can use its various components to illustrate such concepts as the need for probable cause, a specific description of the place to be searched and property to be seized, etc.

AFTER LEAVING THE CLASSROOM

If you said you would send students or the teacher material, don't forget to do so.

A letter to the class thanking them for the opportunity to discuss this very important subject is a nice touch.

New Jersey v. T.L.O.

On January 15, 1985, a divided United States Supreme Court issued a decision on a school search and seizure issue, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

FACTS

A high school principal searched the purse of a 14-year-old female student after the student denied an accusation by a teacher that she was smoking cigarettes in a nonsmoking area, a violation of a school rule. The search resulted in the discovery of cigarettes and rolling papers, the latter item, in the experience of the principal, being associated with marijuana. The discovery of the rolling paper prompted a more thorough search of the purse which revealed marijuana, a pipe, and other items implicating the student in marijuana dealings.

The principal notified the authorities and subsequently turned over the seized evidence to the police, who on the basis of the evidence and a confession, filed delinquency charges. At her delinquency hearing, T.L.O. sought to suppress the evidence and the confession because the former was alleged to have been seized in violation of the Fourth Amendment while the latter was alleged to have been tainted by the alleged unlawful search.

DECISION

The Court was asked to determine whether the Fourth Amendment's "prohibition on unreasonable searches and seizures applies to searches conducted by school officials." A majority of the Court held that it did.

The majority reasoned that school officials, in carrying out searches, were representatives of the state and not merely surrogates for the parents.

Having determined that the Fourth Amendment was applicable to school officials, the Court was faced with a determination as to the standards governing such searches. In so deciding, the Court had to strike a "balance between the school child's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place." The majority held that "the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."

The reasonableness of a search is determined by (1) "whether the search was justified at its inception;" and (2) "whether the search was reasonably related in scope to the circumstances which justified the interference in the first place." The Court held that "when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school" the search is justified at its inception.

The Court noted that the search must not be "excessively intrusive in light of the age and sex of the student and the nature of the infraction."

The extent of a student's protection from unreasonable searches and seizures usually depends upon whether (1) a school or a police official conducted the search, and (2) the search is of one's person or of a place.

Although it is clear that the Fourth Amendment protects people and not places, the nature of the place may determine whether the person had a reasonable expectation of privacy. Thus, courts have upheld warrantless searches of lockers by school officials where it was known that school officials had a master key and reasonable grounds existed for the search. An authorized and voluntary consent to a search by a student will usually validate a search that would otherwise be illegal.

Courts have found that a student has no reasonable expectation of privacy in his/her school locker but have usually provided minimal safeguards where a student's clothing or body has been searched. A recent court ruling upheld a decision that dragnet sniffing of children by dogs (to search for drugs) was impermissible, but noted that such sniffing of cars or lockers by dogs was permissible.

Power and Liberty

Balancing Power and Liberty in the School/Secondary — **Kenneth A. Sprang**

Susan Wise

The schools provide plenty of examples of the need to balance individual rights and the authority of a governing body. Here are three case studies that a lawyer or teacher can use to help students explore this complex and important issue.

The concept of liberty is "something more than exemption from physical restraint" (*Palko v. Connecticut*, 302 U.S. 319, 1937). It includes freedom of thought and lifestyle as well. Certain freedoms are guaranteed to Americans through the Bill of Rights of the Constitution. These include the well-known freedoms of the First Amendment—freedom of speech, religion, and the press—and the protection against unreasonable searches and seizures provided by the Fourth Amendment. The Supreme Court, which stands as the ultimate interpreter of the Constitution, and therefore as the guardian of our rights, has concluded that certain freedoms are so much a part of a civilized society and a system of "ordered liberty," that they deserve special protection, even though they are not specifically mentioned in the Constitution. One of the most important of these "fundamental rights" is the right to privacy.

Our basic rights are protected, among other ways, through the concept of "due process." Due process takes two forms—procedural due process and substantive due process. Procedural due process guarantees citizens notice and the opportunity to be heard. It requires that proceedings such as trials and hearings, and even student suspensions, be conducted in such a way as to assure fairness.

Substantive due process is the means by which fundamental freedoms found in the Constitution (which originally applied only to the federal government) are extended through the Fourteenth Amendment to the states. The right of substantive due process prohibits the government from taking any action which offends a fundamental right unless the government can show a compelling reason for doing so. For example, in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Supreme Court held that an Oregon law requiring all children to attend public schools was unconstitutional, despite the state's desire to standardize education, because the statute interfered with the liberty of parents to direct the upbringing and education of their children by sending their children to private or parochial schools. Likewise, the Court rejected the arguments of the state of Nebraska in *Meyer v. Nebraska*, 262 U.S. 390 (1923), that its statute prohibiting the teaching of foreign languages was necessary to "promote civic development," and assure that the English language "be and become the mother tongue of all children reared in this state." The Court observed that the desire of the state to foster a "homogeneous people with American ideals" was easy to appreciate, but the statute was still unconstitutional because it interfered with fundamental rights of modern language teachers and parents.

The great challenge of our society and our system of government is to balance the preservation of rights so important to the concept of "ordered liberty" with the power that our government must exercise in order to preserve our way of life.

The following cases illustrate the difficulty of this balancing act.

Case 1

John Bodin, his sister Mary Beth, and Chris Eckhardt are students at Byron High School. Their parents are active in a group opposed to U.S. support of the Nicaraguan contras, which determined to wear black armbands during the holiday season and to fast on December 16 to publicize their position. On December 14, the administration of the school district adopted a policy that any student wearing an armband to school would

be suspended until the student agreed to remove the armband. On December 16, John and Mary Beth wore armbands, while Chris wore his the next day. All three students were suspended. They did not return until after New Year's Day, when their protest period had expired. The students sued, alleging that their right of free speech had been violated. The school district argued that its action was based upon fear of a disturbance from the wearing of the armbands.

1. Should students have all the constitutional rights of any other citizen? What modifications, if any, would you suggest in their rights?
2. Would it make any difference if students at Byron High School were allowed to wear other items of political or social significance without punishment, e.g., "Right to Life" or political campaign buttons?
3. What rights must the Court balance in this case?
4. If you were the administration, how would you have handled the matter if you sincerely feared a disturbance at school as a result of the wearing of the armbands?
5. How would you decide this case if you were the judge? What remedy would you give?

Case 2

In April, Matt Fraser delivered a speech nominating a fellow student for president of the Student Council. There were approximately 600 students in the audience, many of them 14 years old. Students were required to either attend the assembly or go to study hall. During the entire speech, Matt referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor. Prior to the speech, two teachers had informed Matt that the speech was inappropriate, and he should probably not deliver it. Student response was mixed. Some were embarrassed, some hooted and yelled, while others used gestures to simulate the sexual activity alluded to in Matt's speech. The Bethel High School Student Code, which was drafted by the Board of Education, provides that:

> Conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures.

The morning after the assembly, Matt was called into the principal's office and notified that he had violated the code; he admitted his conduct. He was then suspended for three days and his name was removed from the list of candidates for graduation speaker. He appealed the suspension through the school's grievance procedure, but the school hearing officer upheld the suspension. Matt sued the school district, alleging violation of his First Amendment right of free speech. He also claimed that his right to procedural due process was violated because he was not informed in advance of the consequences of his actions.

1. Are constitutional rights unlimited? Do we have a right to say whatever we want, whenever and wherever we want? What kinds of limits, if any, would you set for the exercise of such rights?
2. Did students in the audience who were embarrassed have the right to not be exposed to the offensive speech? How should their rights, if any, be protected?
3. Is the Bethel policy reasonable and fair? Are there any changes you would make in the policy?
4. Was Matt's hearing and punishment fair, i.e., is there any merit to his procedural due process claim? Should the precise consequence of every infraction of the Student Code be stated in the code? Is that possible or reasonable?

Case 3

While doing "restroom and hall duty," Mrs. Jackson, a teacher at Piscatway High School, discovered Theresa Louise Olson and her friend Nancy Harper smoking in the restroom in violation of a school rule. Mrs. Jackson took the two girls immediately to the Assistant Principal, Mr. Choplick. Nancy admitted that she had violated the rule, but Theresa denied smoking in the restroom. In fact she insisted that she did not smoke at all.

Mr. Choplick then asked for Theresa's purse. He opened it and found a pack of cigarettes, which he took out. As he reached for the cigarettes, he noticed a package of cigarette rolling papers like those used with marijuana. Mr. Choplick then decided to look through the purse more thoroughly, and found some marijuana, empty plastic bags, a substantial sum of money, a list of students who owed Theresa money, and two letters that suggested Theresa was dealing in marijuana. On the basis of the evidence, Theresa was suspended from school for drug dealing and the evidence was turned over to the police.

At her hearing on delinquency charges, Theresa's attorney argued that the evidence was taken from her purse in violation of her Fourth Amendment right to be free from unreasonable searches and seizures.

1. Does the Fourth Amendment apply to searches by school officials like principals? to parents? Is the role of school officials, such as principals, more like that of parents or government authorities in dealing with students?
2. Should students in school be protected by the Fourth Amendment? Would you answer differently if evidence obtained from a search in school which did not comply with the Fourth Amendment prohibition against unreasonable search and seizure could only be used for discipline in school and not in juvenile delinquency proceedings?
3. Should school officials be required to get a search warrant before examining Theresa's purse? Would it make any difference if Mr. Choplick saw the butt of a gun rather than rolling paper? Why?
4. What rules would you develop for searches in school, e.g., searches of purses, lockers, personal searches?

The Court Speaks

ANSWERS TO CASE 1

This case is based upon *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), in which the Supreme Court upheld the students' rights to wear armbands, noting that students and teachers do not "shed their constitutional rights...at the schoolhouse gate."

1. Yes, *Tinker* resolves the question of whether students have constitutional rights in school. However, other cases have upheld some restrictions on those rights, e.g., children may be prohibited from purchasing pornography, in consideration of their youth.
2. The Court found the fact that the Des Moines school allowed the wearing of other political items, including an Iron Cross (Nazi symbol) "relevant," apparently in part because the fact weakened the school's argument that it feared disruption from the wearing of arm bands.
3. Obviously the balance here is between the students' fundamental right of free speech, and the necessary power and obligation of the school to provide a suitable, orderly environment for education.

4. Many answers are possible. One is that the school officials could have cautioned students against disruption. They could, of course, have disciplined any student who engaged in conduct beyond speech, e.g., fighting.
5. The Court decided for the Tinkers. This question could, however, generate lively discussion. It is a good opportunity to illustrate the importance of the principle of free speech by reference to the protests of the 1960s and current protests against the arms race, Central America policy, etc. Expression of public opinion is critical, of course, to the preservation of our "ordered liberty."

ANSWERS TO CASE 2

This case is based upon *Bethel School District No. 403 v. Fraser*, 106 S. Ct. 3159 (1986). The Court found that the objectives of public education include the "inculcation of fundamental values necessary to the maintenance of a democratic political system." These fundamental values must take into account the sensibilities of others, including fellow students. The freedom to advocate unpopular or controversial views is to be balanced against the society's interest in teaching students the boundaries of socially acceptable behavior. The Court also noted that the same latitude of free speech allowed for adults need not be permitted in public school. Thus, the Court concluded that the First Amendment does not prevent school officials from "determining that to permit a vulgar and lewd speech...would undermine the school's basic educational mission," and that the Constitution does not compel "teachers, parents and elected school officials to surrender control of the American public school system to public school students."

1. No. The history of interpretation of First Amendment rights clearly shows that certain regulation is acceptable. As one famous jurist noted, the right of free speech does not give one the right to yell "fire" in a crowded room. State and local governments can impose reasonable restrictions on the time and place of parades or rallies, for example. The teacher or resource person may wish to discuss with students how one draws the delicate line between reasonable restriction and deprivation of the fundamental rights.
2. This is another balancing task. The issue supports the legitimacy of the school rule. Students should be aware that constitutional law often involves preserving the rights of the minority, as well as balancing individual liberties against the power of the state.
3. There is no right or wrong answer here. The Court found no constitutional violation in the policy.
4. The Court found no due process violation, in part because the punishment was not severe. Matt actually only served two days of his three day suspension. For further information on the applicability of due process to student suspensions see *Goss v. Lopez*, 419 U.S. 565 (1975), which establishes guidelines for due process in suspending students.

ANSWERS TO CASE 3

This case is based on *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), a helpful teaching tool, as the *T.L.O.* Court continually articulated the need to balance the rights of students with the needs (and the exercise of power to meet those needs) of the school.

1. Prior to *T.L.O.* some courts had found that schools stood *in loco parentis* (in the place of parents) and did not act as agents of the state. Since the Constitution only controls governmental action, such courts reasoned that it did not apply to the action of local school officials. The *T.L.O.* Court rejected that analysis, however, holding that school officials do act as representatives of the state.

   The Constitution does not generally affect private action. Consequently, parents' searches of children's belongings are not constitutionally prohibited.
2. The Court concluded in *T.L.O.* that the Fourth Amendment does apply to searches by school officials.
3. In *T.L.O.* the Court did not require a search warrant. The Fourth Amendment protects against "unreasonable" searches and seizures. However, the Court observed that the reasonableness of a search depends "on the context within which a search takes place." Determining the standard as to what is reasonable in the school context involves balancing the student's legitimate expectation of privacy with the need of the school to maintain discipline so that learning can take place.

   The Court held that "school officials need not obtain a warrant before searching a student who is under their authority," observing that a search warrant is unsuited to the school environment, since it would "unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools." Inasmuch as the Court concluded that Mr. Choplick's search without a warrant was constitutional, based on his observation of the rolling paper, a search triggered by seeing the butt of a gun would clearly be constitutional. Consider spending time in discussion with students, however, as to what level of suspicion of illegal activity is necessary to justify a search, i.e., at what point does the interest of the school outweigh the student's right to privacy?
4. The Court concluded in *T.L.O.* that the school setting requires "some modification of the level of suspicion of illicit activity needed to justify a search." Observing again the need to balance the duty of the school to maintain order with the privacy interests of the students, the Court rejected the strong "probable cause" standard usually imposed on law enforcement officials. Rather, it applied a two-part test: 1) whether the initial search was justified at its inception, and 2) whether the actual search conducted was "reasonably related in scope to the circumstances which justified the interference [with the student's privacy right] in the first place." Usually the search is justified at its inception when there are reasonable grounds to suspect the search will turn up evidence that a student has violated or is violating either the law or the rules of the school. The scope of the search will generally be permissible when the steps taken are reasonably related to the objectives of the search and not excessively intrusive in light of the "age and sex of the student and the nature of the infraction."

   In *T.L.O.*, the Court concluded there were two searches. The first was the search for cigarettes, which was reasonable at its inception based on the smoking incident. The second was the search for marijuana-related materials, which was triggered by discovery of the rolling paper. Both met the Court's two-part test.

   The Court specifically reserved any decision on the issue of other kinds of searches, e.g., locker searches. Generally such searches have been upheld if students are on notice of the possibility of searches or if the school has taken some other clear action to take away any reasonable expectation of privacy. The

criterion is the same in evaluating all searches: Does the student have a reasonable expectation of privacy? If the search invades the student's privacy, it is reasonable only if the need for the search outweighs the student's right to privacy. *T.L.O.* has now provided at least some definition as to what is "reasonable" and under what circumstances the needs of the school will prevail.

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Legal Procedure

How Judges Decide/Middle and Secondary — **Shirley S. Abrahamson**

Another public speaking engagement on the calendar—this time, a high school. Normally, the overriding feeling is dread: 45 minutes watching glazed eyes or squirming torsos as I give a justice's traditional speech on the operation of the Wisconsin judicial system. The eyes and the torsos have been the same whether the audience is young or old—the young just don't hide their boredom as well. How do I get them to listen, to be interested, even enthusiastic? How do I get them to understand that a judge is not like a computer; that a judge is not a warehouse of all information about the law who mechanically dispenses the law? A judge, unlike a computer, must think, must exercise judgment.

The class door opens. I am ushered in. And this time, I hope, there will be no glazed eyes or squirming torsos. I begin.

A Bit of Magic

"The best way for you to learn about judges, judicial decision making, and courts is for you all to be judges. Are you willing to serve as judges of the State of Wisconsin for the next 45 minutes?" (Silence.) "Without pay?" (Laughter, and then a fairly enthusiastic "Why not?" And so we're off.)

"We have three kinds of judges in Wisconsin—trial judges, court of appeals judges, and supreme court justices. I'm going to ask you to serve as judges on these three courts. But before I do, I want you to know that all judges of the state must take the same oath, an important oath: to support the U.S. Constitution, to support the Constitution of Wisconsin, and to administer justice fairly and impartially to everyone—whether old or young, rich or poor, of one race or another, man or woman, religious or atheist. I shall ask you each to abide by that oath and to remember that for the next 45 minutes you will be wearing, at least mentally, the black robe—a symbol to yourself and to all who view you that you are a guardian of the public trust for the people of the state.

"Remember, the people have selected you to judge them, to decide their disputes—to decide whether they keep their driver's licenses" (this audience understands that, all right), "or whether they go to prison. Whatever the matter, it's important to the people who have brought it before the court. You did not ask the parties to bring this case to court. But unless you settle this dispute, it will not get settled.

"Are you willing to wear the black robe for this class hour?" (They are still with me, and the responses are positive. So I wave my hands as a magic wand.)

"Poof—you are 'judges of the State of Wisconsin.' Well, 'judges,' here's the case that will wind its way through the courts.

"The Wisconsin legislature—132 persons strong (99 in the assembly, 32 in the senate)—has enacted a statute saying that in multifamily dwellings (that is, with three or more dwelling units) the landlord may evict a tenant who has a pet. Now in your hometown there is a five-family unit, and a tenant asks the

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landlord to come repair a leaking kitchen faucet. The landlord arrives, and he sees a glass bowl on the kitchen table; in the glass bowl there are about four cups of water, and, in the water, there are some pebbles and one three-inch goldfish.

"Now the landlord likes the tenant, but he doesn't want any pets. The landlord describes the statute and gives the tenant a choice: one, get rid of the fish and stay; or, two, keep the fish and leave the apartment for good. The tenant tells the landlord he likes the fish. The fish's name is Tootsie and she is a good companion. The tenant thinks it's silly to have to move because he owns a fish. He tells the landlord there's a third alternative, and it is the one which he is going to take. He's keeping the fish and the apartment.

"Well, what happens when two people can't settle a dispute amicably? What's the American solution?" (The group is warming up to the problem and the response quickly comes—"Take it to court.") The landlord brings his action in the trial court.

"In Wisconsin, the trial court is the circuit court, and in each county (except for several northern countries) there is at least one circuit court. Here, the courthouse is just a couple of blocks away. By the way, how many of you have ever been there? I don't mean to get personal." (Laughter, a few hands go up.) "How many of you have ever watched programs about law, lawyers, and judges on TV?" (More laughter, all hands go up.) "Well, I suggest you visit court and take your folks. Court is interesting. Court sits five days a week, one Saturday and one evening a month in this community. The courtroom is warm in the winter and cool in the summer. And the price of admission is right—the courtroom is open to the public free of charge."

The Trial

(Now the scene is set—a trial courtroom, the witness stand, the jury box, the court reporter, the single blackrobed judge ascending the bench, the audience rising to the words of the bailiff and the case of *Landlord v. Tenant* being called.)

"And the landlord takes the stand, is sworn to tell the truth, and he tells you about finding Tootsie. And then the tenant takes the stand, is sworn to tell the truth, and he describes Tootsie. He also has a letter from each tenant in the building saying that the tenants have no objection to Tootsie—didn't even know she was in the building. And that's the sum total of the testimony. There's no dispute about the facts: Tootsie is a three-inch goldfish residing in four cups of water in a bowl in a multifamily dwelling unit of more than three families.

"In some cases, there is a jury, but in this case there is none." (I might discuss when a case is heard with a jury and the function of the judge and jury.) "The judge takes the case under advisement and tells the parties she'll render the decision in a week.

The Decision

"The judge is alone. She has no one to talk to about Tootsie—not fellow or sister judges who are busy with their own cases, not her husband, not her son. The judge has to wrestle with the problem herself.

"But here we'll think out loud and all of us will discuss the issues facing the trial judge. We'll discuss the pros and cons of deciding the case in favor of the landlord or the tenant. After the discussion, I'll ask those of you in the left six rows to be the trial judge and to decide the case."

(Now it's time for a discussion among the "judges" of the merits of the case and the issues. The discussion varies with the audience, but invariably the Tootsie technique works. On the surface, it is a simple case, but I think I could use it to teach several weeks of a law school course on the judicial process and statutory interpretation.)

"Well, what's the issue the judge has to decide?" (A response: "Whether to evict the tenant?")

"Yes, but to decide that issue what must the judge decide?" (A comment from the back—"Whether the goldfish is a pet.")

"Yes, and how do we decide whether a goldfish is a pet?" (A "judge" ventures—"Well, we all know that.")

"Well, then, define *pet* for me." (Great hesitation.)

"Okay—how do we get a good working definition of *pet*?" (One "judge" may ask whether the statute defines the term.)

"It could, but it doesn't."

(Another "judge" may ask about the lease, which may lead us into a short discussion of contracts—private legislation—and statutes—public legislation—and the relationship between the two. To end that line of inquiry, I say the lease is silent as to pets. Another "judge" wants to look at the dictionary, and we do.)

"The Webster's New World Dictionary, Second College Edition defines *pet* as 'an animal that is tamed or domesticated and kept as a companion or treated with fondness.' Is Tootsie a pet as that word is defined in the dictionary?"

(One "judge" suggests Tootsie is not a pet—she cannot be cuddled or trained. I then test this definition.)

"Suppose the tenant has a ferocious tiger in a cage? Under your definition is the tiger a pet? Should it be a pet under the statute? We are looking for what the legislature meant by the word *pet* in that statute for eviction purposes.

"Why do we look at a dictionary? Because if a term is not specifically defined in a statute, we assume that the legislature, which regulates all our conduct, is using the word as it is commonly used and understood by everyone.

"What we as judges are doing in this search for the definition of pet is what your textbooks say judges are supposed to do—interpret the law. Remember the three branches of government: the legislature makes the law; the judiciary interprets the law; and the executive enforces the law. In deciding whether a goldfish is a pet we are trying to determine legislative intent, legislative policy, legislative purpose. Did the legislature intend Tootsie the goldfish to be a pet within that statute subjecting her owner to eviction? That is the issue the trial judge must decide. One way to determine legislative intent is to look at the statutory definition of the term, another way is to look at the dictionary. Well, we took those two steps. What else can we do to determine legislative intent?"

(A variety of responses: We can call the leaders of the legislature, all 132 legislators, and the governor.)

"It won't help us to call the legislature or the governor. First of all, when you call the legislature whom would you talk to? Which governor? If the statute had been enacted two years ago, perhaps the governor who signed the bill into law and most of the legislators who voted on the bill might still be in office. But what if the statute is 10, even 50, or a 100 years old? Second, with a large number of people voting on any one bill, not all of them will necessarily believe the law means the same thing. The governor and legislature may not agree on what the law means. For these reasons, an individual legislator's comments on legislation are not considered appropriate proof of legislative intent."

(I point out that the search for legislative intent is a usual part of a court's work. Probably more than half of our court's

cases involve interpretation of the constitution, statutes, and regulations. There are other points to be made, but they can be made when we discuss the case as appellate court judges. And so I say...)

"Well, the week has passed; the case has to be decided. As you know, justice delayed is justice denied. But, remember, you have to give people time to prepare their cases for court, and the judge has to give each case due consideration. Justice rushed may be justice crushed. In any event, it's time for the trial judge to make a decision. Reaching a decision is hard work.

"I want you all to close your eyes and ponder the fate of Tootsie. I want each of you 'judges' to make up your own minds and not be influenced by how others decide the case. A key attribute of good judges is that they have open minds—they are neutral, they listen carefully to the facts, they search the law, they weigh the arguments. But each judge must make up his or her mind and vote independently, and not be pressured by other judges, the media, or public opinion. Tough decisions will not always be popular ones.

"It's time for you 'trial judges' to vote even if all your questions have not been answered. Everyone in the room close your eyes, tightly. Remember the figure of Justice is blindfolded.

"'Trial judges'—the six rows on the left—how many of you decide that the legislature intended the word *pet* in this statute to include a goldfish and that Tootsie must be evicted? Please raise your hands high.

"How many of you 'trial judges' decide that the legislature intended that the word *pet* in this statute not include a goldfish and that the tenant not be evicted? Please raise your hands high."

(Invariably there's a split vote. The split depends on the nature of the discussion to this point.)

"In a real trial there's one judge. Here we'll let majority rule, and the majority of the 'trial judges' evicted the tenant. The tenant lost; what can he do?"

(He can take his loss and move, or he can appeal, comes the response.)

"Right. And he appeals to the court of appeals—which is the middle six rows."

(This provides an opportunity to describe briefly the structure of the Wisconsin court of appeals and the difference between a trial and an appellate court.)

The Appeal

"In the appellate court there are no witnesses, no jury—just the record, briefs (which include the written arguments of the tenant and the landlord), and oral argument by the attorneys. The appellate court reviews the decision of the trial court to determine if there was prejudicial error of law.

"There are three judges in the court of appeals, seven justices on the Wisconsin Supreme Court, and nine justices on the United States Supreme Court. All appellate courts have an odd number of judges—the judges are all right, but the number is odd. Why odd?"

(The "judges" have the answer to this one—to avoid tie votes. And maybe a question will be raised about disqualification of judges, illness, or replacements for disqualified judges.)

"And so the judges of the court of appeals read the briefs, hear oral argument, and retire to the conference room to discuss the case. Their discussion will be similar to the one we have been having. So we'll take up our discussion where we left off. Remember? We were searching for legislative intent."

(The hunt goes on and takes us through legislative history, bill jackets, committee papers, other laws, our common sense reasoning about why a legislature would pass such a law. A discussion ensues about the legislature wanting to keep out of apartments animals that may be nuisances—animals that make noise, create unsanitary conditions, or cause property damage. And I may try to wind up the court of appeals discussion saying...)

"So the legislature may have intended 'pet' to mean not the dictionary definition, but those animals that create problems for the neighbors—noise; dirt; safety, health, and property damage. And it is time for the court of appeals judges—the middle six rows—to make their decision and cast their vote. And the issue is a legal issue—the same one the trial court faced. 'Judges,' close your eyes."

(And I state again the questions and call for a decision. The "judges" split again, perhaps differently, and the majority rules.)

"This time the landlord lost. What can he do?"

The Supremes

(Again we discuss the alternatives and, of course, the landlord wishes to appeal to the supreme court. Cost is no object—it's a matter of principle. We might discuss the costs of trial and appeal, including attorney fees, and the right of each person to represent himself or herself or to retain an attorney. If litigants represent themselves, I explain, they must prepare and learn about the law. It's no different from when they repair their car: they must learn how to do it. I note that in the six years I have sat on the Wisconsin Supreme Court, individuals represented themselves in two cases, and each won. My statistics show if there is self-representation there is a 100 percent chance of winning; if there is representation by counsel, the chance of winning is about 50 percent.

(I describe the authority of our court, on a minority vote of three, to decide to review the decision of the court of appeals. And we discuss whether this case is a small-fish-in-a-small-bowl case or one involving an important matter of landlord-tenant law. Of course, the supreme court decides to hear the Tootsie appeal.

(I then describe the supreme court courtroom, the composition of the court, the election and term of justices, and the similarity of procedure between the supreme court and the court of appeals. I ask the "justices" to assume that they have read the briefs and heard oral argument, that they are in the supreme court conference room to discuss and decide the case, and that they should assign a justice to write the opinion. I also tell them that my law clerk refers to justices of the supreme court as "the supremes." And so our discussion continues . . .)

"Well, one supreme court justice might say that the court of appeals held Tootsie wasn't a pet because Tootsie didn't disturb the neighbors. She might ask the brethren, 'How would you vote if Tootsie were a toothless miniature schnauzer, who couldn't bite or chew, who had chronic laryngitis so it didn't make noise, who wore tennis shoes, was paper trained, and never left the apartment?'

"Do we want to interpret the law in such a way that the courts of this state must look at every dog to determine whether it's a good, quiet dog? Or do we want to say that because dogs generally bark and chew, all dogs must be classified as pets? What about fish? Can we say fish generally are not troublesome and therefore are not pets? What if Tootsie could bite and was kept in a tank near an open window on the ground level,

accessible to a three-year-old child?

"Maybe a statutory interpretation that is easy for courts to administer and for people to understand is better than an interpretation that provides for judicial discretion and application of a complex definition." (One "justice" suggests the court interpret the statute as providing a three-inch rule—all animals over three inches are pets; all animals under three inches are not.)

"What if the next goldfish, stretched end to end, measures three and one-tenth inches?" ("I'd stretch the rule," quickly comes the "justice's" response.)

Interpretation vs. Legislation

"Remember 'justices,' we're to interpret the laws, to fill the gaps left by the legislature. We're not here to legislate. Nevertheless we must recognize that to decide this case we have to make choices. Well, suppose we were the legislature, how could we have drafted a better statute?"

(The discussion shows that it's not easy to draft a statute that covers all eventualities and avoids ambiguity. I agree to take one more comment before the supreme court justices vote. A "justice" thoughtfully asks whether this court or any other court has decided this issue before.)

"That is an excellent question. If another court had decided the issue, we would have the benefit of its thinking and reasoning. Also, a basic concern of our system of government is that all people similarly situated be treated the same. Courts follow precedent. The owner of a goldfish in this county should be treated the same as the owner of a goldfish in the next county, as long as the law remains the same. This concern for fairness finds its constitutional expression in the equal protection and the due process clauses of the state and federal constitutions, which we swore to uphold.

"But as judges we need not follow the cases of other states, just of our own state. The reasoning of the judges in other states may be helpful in persuading us, of course, and it's up to the lawyers and to us as judges to find those cases through research. A judge should have a good legal education, and a judge must continue his or her education while on the bench to keep up with developments of the law. Our supreme court requires judges to take courses each year. But, too bad, our case is the first in the country."

(Again, it is time to vote, and I follow the procedure used with the "trial judges" and the "court of appeals judges."

Again, there is a split, and I announce that the majority wins. We discuss the rationale the opinion will use. I stress that the court not only must answer the question presented in the case but also must give a reasoned answer. Resolving the dispute requires the court to make choices considering the statute in issue, other rules of law, and the policy underlying the laws. The court must explain why and how it made the choice it did. The court's rationale will guide lawyers in advising clients and will guide other courts in deciding future cases.

(We might discuss dissenting opinions, publication of opinions, and the availability of the opinions to the public via the media and libraries. I remind the "justices" that there is a parallel system of federal courts, which I describe briefly, and that the loser might, if he can pose a "federal question," take the case to the U.S. Supreme Court. Or the loser might take the issue back to the legislature and seek an amendment of the statute.

(Our time is up, and so I conclude. . .)

"I enjoyed serving with you 'judges' today. I do not think you decided the case by applying labels to the issue—liberal or conservative, strict or liberal construction. You did not decide as you did because you like or dislike fish, dogs, or cats. I think that you did what all good judges do. You were guided by principles and policies set forth in our laws, not personal predilections. You tried to be reasonable and fair.

"Judging cases is similar to making other decisions in life. Each of us makes decisions every day. Some days, the most important decision I make is whether I should let my 17-year-old son have the car that night. The fundamentals of judicial decision making are much the same as the approach we use to solve problems at home and at work. You have a rule that embodies a family or company policy, a family or company value. You have a set of facts. You try to apply the rule and the policy underlying the rule to the facts and come out with a sensible decision.

"Even though you came to the bench as 'judges' with certain experiences, personal beliefs and values, and preconceptions—all people have them—you tried to put then aside and to act in a principled way, to be fair, to do justice. You tried to apply the policy established by the legislature in a rational, meaningful way in the fact situation presented to you. You applied the law to the facts of the case as best you understood the facts and the law. That is what we can and should expect from all our judges.

"I enjoyed serving with you. Now your term as 'judge' must end." (I wave my "magic" hand once more and say. . .) "Poof—you are no longer 'judges.' Oh, by the way, I have sad news to tell you. Just as the supreme court made its decision, Tootsie died. It takes about a year and a half for a case to go through the state court system, which is just about the average lifespan of a goldfish."

(I sit down to laughter, but they want to talk some more about a variety of topics—mootness, frivolous actions, conflicting decisions of judges, uncertainty in the law, too much litigation, the costs of the system to the taxpayer, and on and on...)

Shirley S. Abrahamson is a justice on the Wisconsin Supreme Court and a member of the American Bar Association Standing Committee on Public Education.

For More Information

National Law-Related Education Resource Center

Where can I find materials on developing mock trials?

How can I increase community involvement in LRE?

What videos are available dealing with the Bill of Rights?

Who has more information about school-based alternative dispute resolution programs?

What are some ways to raise funds for local LRE programs?

The National Law-Related Education Resource Center has the answers to these and just about any other question you might have about law-related education.

To find out how the Resource Center can help you, contact: National LRE Resource Center, ABA/YEFC, 541 N. Fairbanks Court, Chicago, IL 60611-3314; (312) 988-5735; fax (312) 988-5032.

Twelve Hints for Lawyers

by Leslie A. Williamson, Jr.

During the past several years, I have addressed several hundred Connecticut public school students on student rights and responsibilities. My discussions with these students have been an educational experience for me and, I trust, for the students.

Based upon my "hit and run" classroom experiences, I was asked to prepare some hints for members of the Connecticut bar on talking to public school students. The following, not in any particular order, are my suggestions.

1. *Know Your Subject*
   This is an obvious hint but nonetheless an extremely important one. Spend some time reviewing material prior to addressing students. Don't underestimate the breadth of their knowledge, their awareness of the law and their interest in the law.

2. *Have a Plan but be Prepared to Vary from It*
   Before you walk into the classroom, you should know what you want to say and how you are going to say it. Establish a presentation outline. (See the suggested procedures for teaching search and seizure elsewhere in this publication.) However, the more interest you generate, the more probable it is that you will get "off track." Don't be afraid of this but don't put yourself in the position where you are unable to get back on track.

3. *Stress Responsibilities as well as Rights*
   You are a guest of the local board of education. The role of your host is to provide students with an education. Your discussion will be integrated within the general goal of the board. Therefore, remember that you are in the school as a lawyer-educator, not a student advocate. Your presentation should stress responsibilities as well as rights. Don't forget to highlight the responsibilities of a board of education.

4. *Control the Classroom*
   Don't expect a teacher to control the classroom for you. When you are in front of the class, you will be tested—on your knowledge of the subject and your management of the students. If a student misbehaves, do something—don't ignore the situation. Don't wait for the teacher to act because, oftentimes, the teacher won't.

5. *Talk with the Students, Not at Them*
   Most students are interested in the law. They will engage in meaningful discussion if given the opportunity. Give them that opportunity! While you may want to spend the entire period lecturing, it is strongly recommended that you don't.

6. *Don't Act Like a Lawyer*
   Certainly you should not take this hint too seriously. However, remember you are not addressing a judge but rather a group of students. Talk with them in words they can understand and take time to explain words or concepts which might not be readily known to your audience. Integrate concepts.

7. *Don't "BS" the Students*
   If you know the answer to a question, answer it. If you don't, tell the students that you don't. If you try to "BS" the students they will know it very quickly and your credibility will be lost.

8. *Use Hypotheticals*
   Use examples to illustrate points you are trying to make. Develop hypotheticals from your imagination or from recent court decisions.

9. *Watch Your Time*
   As interesting as you will be, most of the students' attention span will parallel the class schedule. When the bell rings, they want out! Know when the class is over and time your presentation accordingly.

10. *Work the Class and Work with the Teacher*
    I never lecture, nor do I stand in one place. Move around, interact with students, get each one involved. Talk with the teacher before class to determine which material should be emphasized, the background of the students, and what will be done with the subject matter once you leave.

11. *Don't Accept What "Is"—Discuss Why It "Is"*
    Students will often base answers on personal experiences or school policy. What "is" may not be correct. Challenge students to determine why something "is" and ask whether what "is" is appropriate.

12. *Don't Get Caught in the Middle of a School Controversy*
    Students will often ask you to determine whether actions by a teacher or administrator are appropriate. Don't get placed in the position of making a judgment on the appropriateness of action taken by an educator or on a pending issue. Try to articulate both sides of the issue.

Other Publications of Interest...

ABA/YEFC has produced a number of publications designed to help lawyers and educators develop LRE programs, including:

Lawyers in the Classroom
Contains advice for lawyers volunteering as classroom resource persons

Law Day Partnerships
Helps lawyers and educators improve and expand on their Law Day programs

Putting on Mock Trials
Aids teachers and lawyers in setting up a mock trial for students; also includes sample trials

Establishing Links to the Schools
Assists community volunteers in LRE to form successful partnership programs with schools

Business-School Cooperatives
Outlines techniques to build effective relationships between schools and the business community

The Courts and the Schools
Details ways in which judges and other court personnel can become involved in LRE programs

Police-School Partnerships
Illustrates how law enforcement officers may be used to increase knowledge about the law and establish positive contact with young people

One-Day LRE Conferences
Provides "how-to" advice on holding a one-day conference on LRE, with sample letters, forms and agendas

Perspectives on LRE in the Year 2000
Addresses emerging issues such as student demographics, curricular change, teacher education, and institutionalizing LRE

To order, contact:

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